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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SUMIT ROY, BO SHEN, JOHN ANKCORN,
JOHN APOSTOLOPOULOS, MICHELE COVELL,
MICHAEL HARVILLE, WAI-TIAN TAN, and SUSIE WEE

Appeal 2009-006674
Application 10/698,815
Technology Center 2400

Before JOHN A. JEFFERY, JAY P. LUCAS, and JAMES R. HUGHES,
Administrative Patent Judges.

JEFFERY, *Administrative Patent Judge.*

DECISION ON APPEAL¹

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-50. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants invented a method, medium, system, and apparatus for servicing and delivering content over a network. *See generally* Spec. 1, 3. Claim 1 is illustrative:

A method of managing handoff of media service sessions among service providers in a network, said method comprising:
receiving information associated with said media service sessions at a service manager;
using said information at said service manager to determine whether to initiate a handoff of any of said media service sessions from a service provider to another service provider; and
if it is determined to initiate said handoff, initiating said handoff.

The Examiner relies on the following as evidence of unpatentability:

Kenner	US 6,665,706 B2	Dec. 16, 2003 (filed Dec. 30, 2002)
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THE REJECTION

The Examiner rejected claims 1-50 under 35 U.S.C. § 102(e) as anticipated by Kenner. Ans. 3-4.²

THE CONTENTIONS

Regarding representative claim 1, the Examiner finds that Kenner discloses a method of receiving information (e.g., an EMBED tag having or Smart Mirror (SM) parameter) associated with media service sessions at a service manager (e.g., client program 36) and using the information at the manager to determine whether to initiate a handoff of a session from a

² Throughout this opinion, we refer to (1) the Appeal Brief filed May 16, 2008; (2) the Examiner's Answer mailed August 11, 2008; and (3) the Reply Brief filed October 14, 2008.

service provider (e.g., one mirror site) to another service provider (e.g., another mirror site). *See* Ans. 3, 5, and 6. Appellants argue: (1) Kenner fails to disclose a service manager that receives information associated with media service sessions and determines whether to initiate a handoff of the media service sessions, and (2) Kenner's disclosure of moving from one site to another does not initiate a handoff of media service sessions from a service provider to another provider as recited. App. Br. 13-16; Reply Br. 1-2.

The issues before us, then, are as follows:

ISSUES

Under § 102, has the Examiner erred in rejecting claim 1 by finding that Kenner discloses:

- (1) receiving information associated with media service sessions at a service manager; and
- (2) using the information at the service manager to determine whether to initiate a handoff of any of the media service sessions from a service provider to another service provider?

FINDINGS OF FACT

1. Appellants have not defined "media service sessions," "service manager," and "service provider." *See generally* Specification.
2. Kenner discloses a process for analyzing network traffic to route traffic toward underutilized servers and networks. Kenner, col. 5, ll. 44-52.
3. Kenner's system includes a mirror service provider (MSP) 32 that exercises a management function over: (a) the distribution of delivery sites

26, 28, and 30, and (b) the request allocations to original and delivery sites from the user terminal 12, 16, and 20. The configuration utility 34 and a client program 36 in the user terminal 12 facilitate in this management function. Kenner, col. 7, l. 66 – col. 8, l. 9; Fig. 1.

4. Kenner discusses a Smart Mirror system used to locate a delivery site for downloading a video or audio clip (“clip”). The client or player program 36 provides the Smart Mirroring services facilitated by the MSP 32. The program 36 analyzes the EMBED tag within HTML documents to determine if there is a Smart Mirror (SM) parameter at step 60. Kenner, col. 14, ll. 27-53; Fig. 3.

5. If the SM information exists, Kenner’s client program 36 proceeds through a series of steps (e.g., 62, 64, 66, 70, 78, 80, 82, and 84). These steps include determining which SM site to use for the requested URL at step 82. If the constructed URL is not found at a SM site or is inaccessible, Kenner teaches proceeding to the next-highest ranked SM site at step 84. Kenner, col. 14, l. 57 – col. 15, l. 31; Fig. 3.

6. Kenner explains that the various servers or delivery sites known as “mirror sites” contain information that is substantially identical to that of the original site. Kenner also states that “smart” delivery or mirror sites are used to distribute web content. Kenner, col. 3, l. 65 – col. 4, l. 2; col. 5, ll. 30-32.

7. Kenner’s configuration utility 34 creates a prioritized ranking of the delivery sites and, if the primary SM site fails to respond, the system will go to the next ranked SM site. Kenner, col. 13, ll. 26-30.

8. Kenner’s mirror or delivery sites deliver clips, video streams, and web sites. Kenner, col. 7, ll. 60-65.

ANALYSIS

We begin by construing the key disputed limitation of claim 1 which calls for, in pertinent part, receiving information associated with media service sessions at a service manager. Appellants have not defined the phrase, “media service sessions” (FF 1) nor have they provided any evidence that this term has a particular meaning to an ordinarily skilled artisan (*see* App. Br. 12-16). We therefore construe this phrase with the broadest, reasonable interpretation to include communications (e.g., requests, responses, and delivery of data) to obtain or service any media, contrary to Appellants’ contentions (App. Br. 13-14; Reply Br. 2). Additionally, Appellants have not defined “a service manager” (FF 1), and thus the claim does not limit the location of the service manager. Based on these constructions, we turn to Kenner.

Kenner discloses a process for analyzing network traffic. FF 2. Kenner’s system includes a user terminal (e.g., 12) having a configuration utility 34 and a client program 36. Also, MSP 32 manages how requests from the user terminal are allocated. *See* FF 3. In particular, Kenner’s client program 36 provides Smart Mirroring services by analyzing an EMBED tag to determine if there is a SM parameter. FF 4. Kenner therefore receives information (e.g., an EMBED tag having a SM parameter) associated with media service sessions (e.g., communications to obtain a desired “clip” from the Web) at a service manager (e.g., client program 36) as recited in claim 1. *See id.*

Appellants also argue that the configuration utility 34 determines which delivery site or group of delivery sites is best for the user terminal. App. Br. 15-16. While Kenner discloses the configuration utility 34 creates

a prioritized ranking of the delivery sites, Kenner also discloses that if the primary SM site fails to respond, the system will go to the next ranked SM site. FF 7. The client program 36, however, actually performs the process of moving from one mirror site to another (e.g., a handoff). *See* FF 5. This moving site function (e.g., service sessions) proceeds from analyzing the SM parameter (*see* FF 4-5), and includes determining which SM site to use for the requested URL (e.g., requested medium). *See* FF 5. If this media service session (e.g., URL) is not found at a SM site or is inaccessible, Kenner teaches proceeding to the next-highest ranked SM site. *See id.* We are therefore not persuaded that Kenner's client program (i.e., service manager) fails to use information related to media service sessions – albeit indirectly – to initiate a handoff from one SM delivery site to another SM delivery site. *See* FF 4-5.

Additionally, we note that independent claims 19, 29, 44, and 48 only recite “information” and not information associated with media service sessions. The scope of these claims therefore does not require the received information to be related to media service sessions. Moreover, despite the Examiner's inconsistent statement in the Final Rejection regarding the MSP being the service manager (*see* Final Rej. 5), the Examiner nonetheless states in the Examiner's Answer that the service manager is Kenner's client program (*see* Ans. 5-6).

Also, contrary to Appellants' assertions (App. Br. 16), a delivery site can be a “service provider,” particularly since Appellants have not defined the term. FF 1. Although Kenner discloses elements 14 and 18 as Internet Service Providers (ISPs), this does not exclude other elements from also constituting a “service provider” when giving this phrase its broadest

reasonable construction. *See In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (internal citations omitted). Because Kenner's mirror or delivery sites deliver clips, video streams, and web content (FF 6, 8), we find that Kenner's delivery sites can also provide a service and therefore are "service providers" as broadly recited. Kenner therefore discloses using the information at a service manager to determine whether to initiate a handoff any of the media service sessions from one service provider to another service provider as recited in claim 1.

Finally, Appellants argue for the first time in the Reply Brief that claims 19 and 44 require that one of the content providers, the service providers, and client devices form one of the media service sessions. *Compare* Reply Br. 1-2 *with* App. Br. 12-17. Since this argument is untimely, it is waived. *See Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) (informative) ("[T]he reply brief [is not] an opportunity to make arguments that could have been made in the principal brief on appeal to rebut the Examiner's rejections, but were not."). Nonetheless, as stated above, the communication between the user terminal (e.g., a client device) and a mirror site (e.g., a service provider) form a media service session as required by these claims.

For the foregoing reasons, Appellants have not shown error in the anticipation rejection of independent claim 1 based on Kenner. We therefore sustain the rejection of independent claim 1 and claims 2-50 which are not separately argued with particularity (*see* App. Br. 12, 17).

CONCLUSION

The Examiner did not err in rejecting claims 1-50 under § 102.

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ORDER

The Examiner's decision rejecting claims 1-50 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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